DOCKET FILE COPY ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	
Implementation of the Local Competition	)	
Provisions of the Telecommunications	)	
Act of 1996	)	CC Docket No. 96-98

OPPOSITION OF
BROADSPAN COMMUNICATIONS, INC.
D/B/A PRIMARY NETWORK COMMUNICATIONS, INC.
TO PETITIONS FOR RECONSIDERATION

BroadSpan Communications, Inc. d/b/a Primary Network Communications, Inc. ("PNC"),[1] by its undersigned counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby files this opposition to the petitions of Bell Atlantic and BellSouth for reconsideration of aspects of the Commission's *Fourth Report and Order* released on December 9, 1999 in the above-captioned dockets.[2] For reasons set forth herein, both petitions should be denied in their entirety.

---

[1] PNC is a facilities-based CLEC authorized to provide local exchange and/or intrastate interexchange telecommunications services in Connecticut, Illinois, Indiana, Kansas, Michigan, Missouri, New York, North Carolina, Oklahoma, Tennessee and Wisconsin. PNC is in the process of deploying facilities that will enable customers to purchase xDSL and other advanced telecommunications services.

[2] Deployment of Wireline Services Offering Advanced Telecommunications Capability, Third Report and Order, CC Docket No. 98-147, and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Fourth Report & Order ¶ 3, FCC 99-355, (rel. Dec. 9, 1999) ("Order"). The Bell Atlantic and Bell South Petitions were filed on February 9, 2000.

I. INTRODUCTION AND SUMMARY

The Order represents a significant step in advancement of the goals of the Telecommunications Act of 1996 ("the Act"). Line sharing will facilitate the entry of CLECs into the marketplace for advanced telecommunication services, encourage the deployment of new and more efficient technology, and promote consumer choice for advanced services. The Petitions of BellSouth and Bell Atlantic seek modifications or clarifications of the Order that could hinder or delay these beneficial results. BellSouth seeks a modification that would shift to CLECs the burden of proving technological acceptability in each state, even in cases where acceptability has already been demonstrated before another state commission. This modification would be unreasonable and should be denied for the reasons stated below. Bell Atlantic similarly requests clarifications and/or modifications that should be denied because they are either unnecessary or contrary to the pro-competitive purposes of the Act and the Commission's Order.

II. DISCUSSION

A. The Commission Properly Adopted a Rebuttable Presumption of Deployability of Technologies Approved by a State Commission

Section 51.230(c) of the rules adopted by the Order provides that if loop technology has been successfully demonstrated as acceptable for deployment before a particular state commission, then the deployed technology shall be presumed acceptable for deployment in other areas. The incumbent carrier may rebut this presumption before a state commission if the technology proposed for deployment poses a real interference threat in a certain area.[3]

---

[3] Order ¶ 199.

BellSouth objects to this approach because, in BellSouth's view, it would allow a single state commission to set a national standard for technology deployment.[4]

BellSouth's concerns are misplaced. Section 51.230(c) does not require a state commission to accept the finding of another state commission. Rather, it reasonably assumes that a demonstration of acceptability may apply equally in more than one jurisdiction unless the incumbent carrier shows that it does not. This common-sense approach allocates the burden of demonstrating acceptability in a logical manner. Indeed, it would be unreasonable to presume, as does BellSouth's proposed modification, that a CLEC must start from scratch in each jurisdiction once acceptability of loop technology has been demonstrated before one or more state commissions. Such a presumption would likely cause CLECs to incur unnecessary burdens and expense in making redundant demonstrations of acceptability in each state. It also would likely delay unnecessarily CLECs' introduction of new services in many states. Placing the burden on incumbent carriers as provided under Section 51.230(c) is appropriate for the additional reason that an incumbent carrier will likely have access to information about its network that is necessary to make an initial assessment of acceptability. The incumbent carrier may then bring this information before a state commission in those situations where the presumption may not apply because of differences in networks.

For the reasons stated above, Section 51.230(c) should not be modified as proposed by BellSouth and the Commission should deny BellSouth's Petition.

---

4 *See, e.g.* BellSouth Petition at 2.

B. The Commission Should Not Restrict Competitive LECs' Access to the Full Spectrum of the Loop for Testing Purposes as Proposed by Bell Atlantic.

The Commission correctly recognized that CLECs using the high-frequency portion of the loop require access to the full frequency spectrum of the loop for testing purposes.[5] Bell Atlantic, however, requests that the Commission "clarify" that incumbent carriers may restrict CLECs from accessing the full frequency spectrum of the loop for testing purposes.[6] Bell Atlantic suggests that the rules adopted by the Order may allow such a restriction, despite contrary language in the Order.

To support its argument Bell Atlantic asserts that the statement of Dr. Dennis J. Austin, one of the authorities cited by the Commission, is based solely on existing, non-sharing arrangements.[7] This assertion, however, appears to mischaracterize Dr. Austin's statement. Dr. Austin does discuss the testing capability required to support *existing* xDSL services, but only by way of explaining the requirements that will *continue* to be necessary for line sharing.[8] Those requirements include CLEC access to the "full frequency spectrum for comprehensive metallic loop testing."[9] Thus, when read in context, Dr. Austin's statement does not support Bell Atlantic's proposal to restrict CLECs' access to the full frequency spectrum of the loop for testing purposes.

---

5 Order ¶ 113.

6 Bell Atlantic Petition at 2-5.

7 Id. at 4.

8 Letter from Michael E. Olsen, NorthPoint Communications, Inc., to Magalie Roman Salas, Secretary, Federal Communications Commission, CC Docket No. 98-147, Attached Statement of Dr. Dennis J. Austin at 27 (filed Sept. 30, 1999) ("Combined CLEC Ex Parte").

9 Id.

Bell Atlantic's concern regarding disruption to the incumbent's voice service is also misplaced. Dr. Austin explained that a customer service representative can easily inform the customer that testing will affect both services and obtain permission to conduct the test in order to isolate and repair the trouble.[10] The CLEC has no incentive to perform unnecessary testing of the voice portion of the loop because the end user is the customer of both the ILEC voice and the CLEC data service. As the Commission recognized in the Order, joint-customer issues have been handled successfully in similar contexts, and each carrier has a responsibility to educate the customer on these issues.[11]

In addition, metallic loop testing ("MLT") -- which accesses the full frequency spectrum of the loop for testing purposes -- currently is the most dependable means of evaluating the ability of a copper loop to provide xDSL services. Bell Atlantic and other ILECs use MLT to evaluate line-shared copper loops, and the CLECs should have the same ability as their ILEC competitors.

For the foregoing reasons, the Commission should deny Bell Atlantic's proposed "clarification" to restrict CLECs' access to the full frequency spectrum of the loop. Because Bell Atlantic has suggested that Section 51.319(h)(7)(i) of the Commission's Rules allows such a restriction, the Commission should confirm that Bell Atlantic's interpretation is incorrect.

C. The Commission Should Not Grant a Blanket Exemption from Line Sharing for All Loops Exceeding 18,000 Feet as Proposed by Bell Atlantic

The Order reasonably requires that the incumbent refusing a CLEC's request to condition a loop make an affirmative showing to the relevant state commission that

---

10 Combined CLEC Ex Parte at 28.

11 Order ¶¶ 120-122.

conditioning the specific loop in question will significantly degrade voiceband services.[12] In its Petition Bell Atlantic requests a blanket waiver from this requirement for all loops exceeding 18,000 feet in length.[13]

While equipment such as loading coils may generally be required to provide voice band services on long loops, it would be inappropriate for the Commission to grant incumbent LECs an automatic waiver from sharing any line exceeding 18,000 feet. The record in this proceeding does not establish 18,000 feet as a precise point at which conditioning will universally result in degradation of voiceband services.

State commissions should be allowed to determine the extent to which such a waiver should be granted, if at all, based on a particular incumbent's network architecture and evolving technology. In cases where sharing a particular loop would clearly require removal of the loading coils, CLECs would not have the incentive to spend time and resources on a futile state commission proceeding to require an ILEC to prove what is already obvious.

Moreover, rapidly developing technology is continuously extending the distance by which xDSL services can be provided over a local loop. By granting a blanket waiver for loops greater than 18,000 feet, the Commission would eliminate any incentive for CLECs or other carriers to serve customers served by these loops. This, in particular, would hurt the deployment of advanced services in such places as rural America.

D. Clarification of the Deployment Schedule is Unnecessary

Bell Atlantic urges the Commission to clarify that industry members working in a collaborative process may adopt an alternative to the Commission's 180-day deployment

---

12 Id. ¶ 86.

13 Bell Atlantic Petition at 6-7.

schedule.[14] Bell Atlantic states that its experience with the "xDSL Collaborative" in New York indicates that the members of that collaboration may need more than 180 days to implement line sharing.[15]

The clarification requested by Bell Atlantic is unnecessary. The Order does not purport to prohibit parties from agreeing on an alternative deployment schedule. However, the importance of line sharing may differ substantially from one CLEC to the next, depending on a given CLEC's business plan. Obviously, a CLEC who agreed to an alternative schedule could not reasonably complain that the 180-day schedule was not met. The Commission, however, should not grant incumbent carriers advance authority to delay implementation of line sharing merely because an incumbent carrier is working with certain "industry members" who agree to the delay.

D. Obsolete Technologies Should Not Automatically Trump New, More Efficient Technologies as Proposed by Bell Atlantic

The Order allows state commissions to exercise their discretion with respect to the disposition of known interfering technologies such as analog T1.[16] The Commission adopted this approach as a more flexible alternative to a national sunset period for these technologies. Bell Atlantic, however, continues to argue that incumbent carriers should be allowed to determine the disposition of older technologies based on "market forces."[17]

---

14 Id. at 7-8.

15 Id. at 7.

16 Order ¶¶ 206 et seq.

17 Bell Atlantic Petition at 8-9.

The Commission's approach maintains a delicate balance between proscribing such obsolete equipment that causes interference and allowing the market to determine when such equipment should be removed from the loops. A potential danger of Bell Atlantic's free market approach is that the ILECs could use it as a barrier to CLEC provisioning of advanced services by refusing to remove equipment from specific loops. By providing state commissions with a role in determining when ILECs must remove obsolete technology that interferes with line sharing, the Commission can help prevent such abuses.

Moreover, under the Order, market forces will continue to be the principal determinant in the deployment and retirement of interfering technologies. Incumbent carriers were already removing these technologies from their operations prior to issuance of the Order.[18] State commissions, however, should be allowed to take remedial action in cases where the deployment of or failure to remove known disturbers has anti-competitive effects. The Commission provided several approaches that state commissions may follow in reaching an appropriate outcome in a given situation, such as requiring segregation of the interfering technology, adopting a sunset requirement, or use of enforcement mechanisms.[19] If Bell Atlantic or another carrier is aggrieved by a state commission's disposition of interfering technologies, then it should seek appropriate relief at that time. The Order, however, should not be modified to restrict state commission authority as proposed by Bell Atlantic.

---

18 Order ¶ 220 n.530.

19 Id. ¶ 218.

III. CONCLUSION

For the reasons stated above, the Order and rules adopted therein should not be clarified or modified as requested by Bell Atlantic and Bell South. Accordingly, the Commission should deny their Petitions.

Respectfully submitted,

BROADSPAN COMMUNICATIONS, INC.
D/B/A PRIMARY NETWORK
COMMUNICATIONS, INC.

By: _____

Patrick J. Donovan
Anthony M. Black
Kevin D. Minsky
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW – Suite 300
Washington, DC 20007
(202) 424-7500

Colleen M. Dale
Senior Counsel
BroadSpan Communications, Inc.
d/b/a Primary Network
Communications, Inc.
11756 Borman Drive, Suite 101
St. Louis, MO 63146
(314) 214-0066

March 22, 2000

324040.2